

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 7474 of 2004

The State of Mah and anr ...petitioners

VS

Shri Madhukar Laxman Bhat.. respondent

with

Writ Petition No.7468 of 2004

The State of Mah and anr.. petitioners

VS

Bharat Baburao Maskar ... respondent

with

Writ Petition No.7459 of 2004

The State of Mah and anr... petitinoers

VS

Jayant A Shinde ..respondent

with

Writ Petition No.7483 of 2004

The State of Mah and anr.. petitioners

VS

Rajesh M Ahire ..respondent

with

Writ Petition No.7469 of 2004

The State of Mah and anr.. petitioners

VS

Sharad S Shelke ...respondent

Ms J S Paware Addl GP for petitioners

Mr. C.U Singh with Mr. Bandiwadekar and Mr. Ganesh Gole for respondent

**CORAM: A.P.SHAH & S.C DHARMADHIKARI JJ**

**Dated 4.11.2004**

P.C:

1. Rule is issued on all petitions. Learned counsel appearing for respondents waive service.
2. By consent Rule is made returnable forthwith and taken up for hearing.
3. These petitions are directed against a common order passed by the Maharashtra Administrative Tribunal dated 4.6.2004 whereby the tribunal has set aside the suspension of the respondents and directed their reinstatement in service. The tribunal has held that though the chargesheet was issued in view of the fact that there was delay of more than one year in issuing the chargesheet the order of suspension is liable to be vacated. According to the tribunal keeping the respondents under suspension for such a long period would amount to punitive action without any inquiry. It was further observed by the tribunal that the respondents are not in a position to tamper with the evidence or influence the witnesses and therefore further continuation of suspension and payment of subsistence allowance to the respondents without extracting any work from them will only

amount to waste of public money. We have heard the learned counsel for the parties at some length. In our opinion it is impossible to sustain the impugned order of the tribunal.

4. The respondents before us were working in the Bombay Central Prison and Nasik Road Central Prison and they are facing departmental proceedings for serious acts of misconduct. The charge against the respondents relates to transfer of 13 prisoners belonging to Rajan gang from Mumbai Central Prison to Nasik Road Central Prison on 23.11.2002 and incident which took place on the very next day in which a prisoner by name O P Singh was found murdered in Nasik Road Central Prison for which these 13 prisoners are suspected to be responsible. During the preliminary inquiry carried by the Dy Inspector General of Prisons, Southern Region, Mumbai it was revealed that the action of calling the police escort and shifting the said prisoners without prior approval of the Superintendent, the DIG (Prisons) and I.G. (Prisons) was in violation of the specific instructions contained in Circulars dated 24.9.1992 and 23.10.1996. It was pointed out that the said prisoners were not transferred when the dates of their cases in the court were far off

but were transferred when such dates were very close. It was also revealed during the inquiry that 13 prisoners of Rajan gang after their transfer to Nasik Prison organised a cricket match and while the prisoner O P Singh died in suspicious circumstance the officers were busy in watching cricket match. Therefore it was decided to take action against the concerned employees and charge sheet came to be issued. It appears that there was some delay in issuing the chargesheet as the State Government was awaiting the report from Kashyap Commission. However, mere delay in issuing the chargesheet would not by itself amount to punitive action by any stretch of imagination. In any event looking to the nature of the charges levelled against the respondents the tribunal was not justified in interfering with the order of suspension of respondents pending inquiry.

5. A Constitution Bench of the Supreme Court in R.P.Kapur v Union of India, AIR 1964 SC 787 at page 792 laid down the law as follows:

"The general principle therefore is that an employee can suspend an employee pending an inquiry into his conduct and the only

question that can arise on ;such suspension will relate to the payment during the period of such suspension . If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy or government, the employee in the case of government must be held to be the authority which has the power to appoint a public servant. On general principle therefore the authority entitled to appoint a public

servant would be entitled to suspend him pending a departmental inquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him".

6. In U P Rajya Krishi Utpadan Mandi Parishad vs Sanjiv Rajan, 1993 Supp (3) SCC 483 the Supreme Court held as under:

"Ordinarily when there is an accusation of defalcation of monies the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered".

From the chargesheet it is clear that the

allegations against the first respondent are grave inasmuch as they indicate the amount mentioned therein are not deposited in the bank and forged entries have been made in the pass book and the amounts are shown as having been deposited. In the circumstances the High Court should not have interfered with the order of suspension passed by the authorities. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension".

7. The purpose and scope of suspension was also considered by the Supreme Court in the case of State of Orissa vs Bimal Kumar Mohanty, AIR 1994 SC 2296 wherein K Ramaswamy J., speaking for the Bench observed as under:

"Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to

perpetrate the alleged misconduct or to removal; the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it create on the service for the continuance of the delinquent employee in service pending enquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by malafide, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a

criminal charge".

8 On the facts of the present case we are of the considered view that since serious allegations of misconduct have been alleged against the respondents, the tribunal should not have interfered with the order of suspension passed by the authorities. The tribunal appears to have proceeded on a misconceived notion that the orders passed by authorities amounted to punitive action.

9. The learned counsel for the respondents sought to contend that in two other cases of Shri Mahure and Shri Desai, the order of the tribunal was accepted by the petitioners and those two officers have been reinstated in service. The contention is without any merit. It was pointed out to us that the cases of Mahure and Desai stand on a different footing. Apart from this two wrongs do not make one right. Surely a party cannot claim that since something wrong has been done in another case, direction should be given for doing another wrong, it would not be setting a wrong right but would be perpetuating another wrong. (See Union of India and anr vs International Trading Co and anr, AIR 2003 SC 3983).

10. The learned AGP stated that the State Government has taken a decision to appoint the enquiry officer who shall not be given other work except the inquiry against the present respondents and the enquiry officer shall complete the inquiry and submit the report expeditiously and in any event within 3 months. It is needless to say that the respondents shall cooperate with the inquiry and shall not ask for unnecessary adjournment. The enquiry officer shall conduct the case on day to day basis and make his report within three months.

11. In the result the impugned order of the tribunal is quashed and set aside and the petitions stand disposed in terms of above order.